

Date of decision: 24-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(24-7-1996)

Miss. Nandini Joshi for the petitioner.
None present for the respondent.

ORAL JUDGMENT:

This writ petition by the Gujarat State Road Transport Corporation is directed against the award of the Labour Court, Ahmedabad, made in Reference (LCA) No.41 of 1978 on 31st March, 1982 under which the respondent workman was ordered to be reinstated in service on the original post with continuity of service, but without backwages. The

facts which are necessary for the disposal of this writ petition, briefly stated, are as follows:

The respondent workman was working as driver under the Corporation. On 27-2-1976 he was on duty on Disa Panthwada route. He allowed three unauthorised persons to sit in the cabin of the driver. The conductor of the bus went to those three persons for issuing tickets to them, but the respondent workman (driver) did not allow the conductor to give tickets to those persons. Those persons had beaten the conductor and abused him, but still the respondent-driver did not intervene in the matter and stop those persons from misbehaving with the conductor. Upon this conduct of the driver and those three unauthorised persons, the conductor insisted that until those three persons are given the tickets he will not allow the bus to start. On this the respondent workman got excited, opened the bonnet of the bus and broke the flow pipe and removed the bolts and accelerator and declared that the bus had a break down. He forced the conductor to go to Panthwada to inform the Manager about the break down. This unauthorised act of the driver has resulted in causing great difficulties and inconvenience to the passengers. The passengers were forced to proceed on foot. The driver has been charged sheeted for the misconduct. In the inquiry, the charge was found proved against him. The disciplinary authority, taking into consideration the seriousness of the misconduct, dismissed the workman from service. The workman raised industrial dispute and the same has been referred to the Labour Court for adjudication.

2. The papers of the domestic inquiry conducted against the workmen were produced before the Labour Court on behalf of the Corporation. When the matter had come up for hearing before the Labour Court the respondent workman filed Pursis Exh.9 admitting the legality of the domestic inquiry held against him and he stated that he did not wish to lead any oral evidence. On behalf of the Corporation Pursis Exh.10 was given stating that as the workman had admitted the legality and propriety of the inquiry conducted against him by the Corporation, it did not desire to lead any oral evidence and the same may be treated as closed. The only point considered by the Labour Court for its decision was about punishment given to the workman. Relying on the decision of this Court in special civil application No.2740 of 1981 decided on 1-12-1981 the Labour Court has reached the conclusion that the penalty of dismissal was extreme. The Labour Court has given reasons for taking lenient view in the matter of punishment that looking to the condition prevailing in the country and the widespread unemployment and absence of unemployment insurance schemes the punishment

of dismissal should be given only in rare cases.

3. Learned counsel for the petitioner, relying on the decision of the Supreme Court in the case of State Bank of India vs. Samarendra Kishore Endow, reported in 1994(1) SC 217, and in the case of B. C. Chaturvedi vs. Union of India and others, reported in JT 1995 (8) S.C. 65, contended that the Labour Court has very limited power of judicial review in the matter of quantum of punishment to be awarded to a delinquent for proved misconduct. In the matter of punishment, interference could have been made only where punishment imposed by the disciplinary authority or the appellate authority is shockingly disproportionate to the guilt. Learned counsel for the petitioner further contended that the misconduct which was there against the workman was grave and serious. He had allowed three unauthorised persons to travel in the bus and allowed them to sit in the driver's cabin and did not allow the conductor of the bus to issue tickets to those three persons. Not only this, when the conductor insisted on issuing tickets to those three persons he had gone to the extent of damaging the property of the Corporation and the bus was deliberately made to break down. Learned counsel for the petitioner contended that the Corporation provides travelling facilities to the passengers and because of the conduct of the respondent-driver the travelling public had to go to their respective destinations on foot. The driver should have taken care of the passengers, leaving apart the dispute in between him and the conductor. But he has not taken care of the passengers and compelled them to go to their destinations on foot. This conduct of the workman certainly lowered down the prestige and reputation of the Corporation amongst the travelling public and in such matters no lenient view should have been taken and the minimum punishment should be dismissal from service.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. The decision of the Division Bench of this court has not been correctly read by the Labour Court. It is nowhere laid down that in no case penalty of dismissal could be given to the delinquent workman. Apart from this, the Labour Court have not interfered with the punishment of dismissal given to the workman only on the ground that there is wholesome unemployment in the country and there is no unemployment insurance scheme. If that position is allowed, then in no case penalty of dismissal, removal or termination can be given. The apex court in the aforesaid two cases held that in the matter of punishment to be given to a delinquent on proved misconduct the Court and Tribunal has very limited jurisdiction. But interference could be made in the matter

of penalty to be given where the penalty is considered to be shocking the judicial conscience of the Court and not otherwise. In the present case, in the facts of the case which have come on record, coupled with the fact that the inquiry was not found defective and the charges framed against the workman was found proved, can the interference made by the labour court with the punishment which has been given to the workman be said to be justified? The reply to this question is obviously in negative. The Labour Court has failed to take into consideration the important fact that the Corporation provided public utility service and it cannot be compelled to continue an employee who deliberately caused damage to the bus and deliberately made the bus to break down, which has resulted in causing inconvenience to the passengers travelling in the said bus. Because of the aforesaid deliberate Act of the workman, the passengers travelling in the said bus were compelled to go to their destinations on foot. This conduct of an employee of the Corporation has resulted in damaging the reputation of the Corporation. Deliberate causing of damage to the bus as well as allowing three unauthorised persons to travel in the driver's cabin of the bus are serious misconducts. Above all, the respondent workman had not allowed the conductor to issue tickets to those three persons. The respondent workman interfered with the discharge of duties by the conductor and he forced him to put the Corporation to loss of money which could have been collected from those three persons. Such interference of the driver in the discharge of duties by the conductor is a very serious misconduct and the minimum punishment for such persons should have been dismissal from service. The Labour Court has interfered with the punishment of dismissal without giving any cogent and justifiable reasons. It is not a case where the matter should have been taken lightly. The considerations weighed with the Labour Court are not germane to the facts of the case. The punishment which has been given to the delinquent in a given case has to be considered with reference to the gravity of the misconduct alleged and proved and not with reference to the employment of that person. If the Corporation is compelled to continue such a driver in its service it will not only encourage indiscipline among other persons, to the extent of putting the passengers travelling in the Corporation's bus to inconvenience, but also tarnish the reputation of the Corporation. Taking into consideration the totality of the facts of the case and the law laid down by the apex court, it is a case where interference with the award made by the Labour Court is called for.

5. In the result this special civil application is allowed and the award of the Labour Court, Ahmedabad, in

Reference (LCA) No.41 of 1978 made on 31st March,1982 is quashed and set aside. Rule made absolute in the aforesaid terms. No order as to costs.

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